IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 4TH DECEMBER 2006 / 13TH AGRAHAYANA 1928

**Crl.Rev.Pet.No. 4081 of 2006()**

CRA.136/2006 of III ADDL.SESSIONS COURT, KOLLAM
CC.937/2002 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOLLAM

REVN. PETITIONER: APPELLANT/ACCUSED:
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P. JANARDHANAN PILLAI,
S/O.PARAMESWARA PILLAI, KARUVELIL VEEDU,
AYATHIL CHERRY, VADAKKEVILA VILLAGE,
KOLLAM.

BY ADV. SRI.C.RAJENDRAN

RESPONDENTS: RESPONDENTS: COMPLAINANT:
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1. THE STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. O.B. PRADEEP KUMAR,
S/O.BALAKRISHNA PILLAI, `SAKTHI'
AYATHIL CHERRY, VADAKKEVILA VILLAGE, KOLLAM.

PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 04/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**K.T. SANKARAN, J.**

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**CRL.R.P.NO. 4081 OF 2006**

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**Dated this the 4th day of December,2006**

**O R D E R**

In the manner in which I propose to dispose of the Criminal Revision Petition, I do not think that it is necessary to issue notice to the second respondent/complainant as no interference is being made in the conviction of the petitioner.

2. The revision petitioner was found guilty for the offence under Section 138 of the Negotiable Instruments Act in C.C.No.937 of 2002, on the file of the Court of the Judicial Magistrate of the First Class II, Kollam. The trial court sentenced him to undergo simple imprisonment for eight months and to pay a fine of Rs.5,000/- and in default of payment of fine, to undergo simple imprisonment for a further period of two months. The trial court also directed that if the fine is realised, the

same shall be given to the complainant as compensation under Section 357(1) of the Code of Criminal Procedure. Challenging the conviction and sentence, the petitioner filed Crl.A.No.136 of 2006, on the file of the Court of the Sessions Judge, Kollam. The Appellate Court confirmed the conviction and sentence and dismissed the appeal.

3. The learned counsel for the petitioner submitted that the petitioner is prepared to pay to the second respondent/complainant the full amount of Rs.One lakh covered by the cheque in respect of which the complaint was instituted. It is submitted that the sentence of imprisonment is too harsh. It is also submitted by the counsel for the petitioner that a reasonable time may be granted to the petitioner to pay the amount covered by the cheque.

4. The case of the complainant is that the

accused borrowed an amount of Rs.One lakh from the complainant and Ext.P1 cheque was issued. As per the judgments now passed by the courts below, the complainant would get a maximum of Rs.5,000/- if the accused pays the fine amount of Rs.5,000/-. On the other hand, if the accused pays the entire amount covered by the cheque that would certainly be beneficial to the second respondent/complainant. In the facts and circumstances of the case, I am inclined to accept the submission made by the learned counsel for the petitioner. I am of the view that the sentence of imprisonment can be reduced to imprisonment till the rising of the Court. Instead of the sentence to pay fine of Rs.5,000/-, I am of the view that the petitioner/accused can be directed to pay a sum of Rs.One lakh to the complainant as compensation under Section 357(3) of the Code of Criminal Procedure.

In the result, the Criminal Revision Petition is allowed in part as indicated below:

1) The conviction of the petitioner under Section 138 of the Negotiable Instruments Act is confirmed.

2) The sentence of imprisonment is reduced to imprisonment till the rising of the Court.

3) The sentence to pay fine of Rs.5,000/- is set aside. Instead, there will be a direction to the revision petitioner/accused to pay a sum of Rs.One lakh to the complainant as compensation under Section 357(3) of the Code of Criminal Procedure. In default of payment of compensation, the petitioner/accused shall undergo simple imprisonment for a period of two months.

4) Three months' time is granted to the petitioner to pay the compensation amount. The default sentence shall be kept in abeyance for a period of three months.

Registry shall send a copy of this order to the second respondent in the Revision.

**(K.T.SANKARAN)**
**Judge**

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**K.T.SANKARAN, J.**

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**CRL.M.C.NO. OF**

**O R D E R**

September, 2006

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